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Analysing Turkey's 2010 constitutional referendum

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Over the past few summer months, a political battle took place in Turkey involving heavy, acrimonious campaigning and vitriolic barbs traded between political leaders. To most followers of Turkey's domestic politics, these characteristics are true of any electoral campaign in the country. So far, so familiar. However, this time the campaigning focused not on attaining electoral office but revolved around a popular referendum on whether or not to reform the country's constitution which was written in 1982 under a military regime. The results of the campaign as much as the campaign itself were testimony to the extent to which the political realities of daily life in the country at the end of the first decade in the 21st century have changed from those 10 years ago. In addition, they also revealed the deep fault-lines and socio-political cleavages that divide society and which will become increasingly visible in the run-up to next year's national elections. This paper will briefly examine the constitutional changes that were approved of and what the actual referendum say about the state of Turkish politics.

On September 12, on the 30th anniversary of the 1980 military coup, 58% of the electorate endorsed the government's campaign to reform the constitution. Although the constitution had been amended before, it was never on such a scale. As before and during the campaign, its results and their implications for Turkey's political future ahead of next year's parliamentary elections, continue to divide the country. Some have painted a bleak picture for Turkey's political future by interpreting the results as paving the way for creeping form of civil authoritarianism under the present Justice and Development Party (AKP) that will have institutional control over the executive, the legislature and the judiciary and transform Turkey into an ill-defined form of quasi-presidential regime.¹ Others supported the changes as a positive and necessary step forward on the country's path to furthering democratic consolidation by weakening the power and legitimacy of Turkey's authoritarian legacy and the popular construction of a strong paternal state, *baba devlet*, which disdains the rules of the democratic game. A third camp including such liberal intellectuals as Orhan Pamuk and the singer Sezen Aksu cautiously welcomed the constitutional changes as a good start but argued that much more was necessary to overcome the authoritarian past of the Turkish state and consolidate the country's liberal democracy.

The actual amendments to the constitution which were voted through are a 'mixed bag' according to political scientist Ilter Turan.² While some are universally accepted as necessary for consolidating liberal democracy in Turkey, others caused hefty and very combative debate. The changes that were easily agreed upon concerned emphasizing positive discrimination towards women, children and the handicapped, establishing public ombudsmen and expanding the protection of personal privacy and data protection. Also reformed were articles of the constitution which have deprived labor unions of certain rights. While these amendments were relative easy to agree on, one of the more controversial and conspicuous one, a revision to article 166, included a focus on lifting the veil of legal impunity off the military authors of the 1980 military coup making even the Chief of staff at time and subsequent president of the republic, Kenan Evren, 'touchable' to a court of law.³

1 CHP (2010) *CHP President Kemal Kiliçdaroğlu's letter explaining his "no" vote*, CHP EU Representation, Online at: <http://brussels.chop.org.tr/?Islem=BultenGoster&BultenID92>

2 Ilter Turan (2010) *A background to the constitutional referendum: Reinforcing the politics of polarization*, German Marshall Fund of the United States

3 One key proposal of the government which did not appear in the final reform package due to insufficient parliamentary support was to remove the constitutional court's powers to dissolve political parties. This had been quite central to the government's aim as the AKP itself had been targeted for potential closure in 2007. Turkey's constitutional court is considered to be quite activist in this sense, having banned 24 parties since 1961.

Nevertheless, it was amendment to article 159 that stole the thunder of public attention from most of the proposals and aroused a very heated discussion and debate in the domestic and foreign media as well as amongst those who were more informed on the contents of the constitutional reform package. This article concerns the composition of the higher organs of the judicial authorities like the Supreme Board of Prosecutors and Judges which makes judicial appointments. It potentially allows for active government interference in this body. This has stirred fears amongst the secularist opposition and government critics that the AKP is slowly institutionalizing itself as a hegemonic party across the executive, legislation and now judicial authorities and thereby circumventing the checks and balances of the democratic system. Turkey's judicial authorities, especially its constitutional court, are regarded as one of the last remaining bastions of the old secular Kemalist order along with the armed forces, the centre-left Republican People's Party (CHP), the traditional Istanbul-centered business elite and increasingly fragmented parts of the civil service. The constitutional court has sometimes acted a crucial agent in blocking some of the AKP's more controversial legislation proposals in the past such as criminalizing adultery or repealing the head-scarf ban at public universities. The anxiety revolving around possible government interference into the workings of the judicial bodies has spread to the European Commission which stated that it will keep an eye on how this new arrangement will work in practice.⁴ The government meanwhile has denied having any ambitions of interfering with the judicial bodies and claimed the changes were to facilitate institutional interaction.

However, it was not just the actual changes that were the topic of the heavy-handed debates which were waged over the summer. The manner in which the changes were drafted and presented attracted much criticism as well for the lack of consensus-building with the political opposition and civil society in drafting the proposals. There was very little deliberation with any bodies outside the AKP on what to include in the constitutional reform package. Instead many chide the government for was presenting the reform package in January as a done deal with minimum input from outside the government. However, the actual nature of the campaigns over the summer revolved in many ways not so much about the content of the constitutional reform package but rather shifted to a political discussion on the merits of the current AKP government. In their campaigning efforts to convince the Turkish electorate to reject the proposed changes for instances, the opposition parties for instance spent most of their energy attacking the government on its actual policies, alleged corruption cases and economic mismanagement. Indeed, the CHP's new leader Kılıçdaroğlu referred to the campaign as a 'war of liberation' from the AKP.⁵ Thus, the referendum was transformed into a popular vote of confidence in the government or as a 'major dress rehearsal'⁶ for Turkey's upcoming elections in 2011.

In this sense then the result of 58% of the electorate voting for the constitutional reform package was read as a unexpectedly large endorsement of the AKP which many took as signifying that the party headed by the combative Recep Tayyip Erdoğan could head to government for a third spell since they were first elected in 2002. But when the geographical distribution of the voting is examined it becomes clear to what extent the voting results for the referendum reproduced the main social, cultural and political divisions and cleavages that have defined Turkey's society in the past decade. As shown in figure 1, the brunt of the

4 Sevil Küçükkoşum (2010) 'European Commission wary on restructured HSYK', *Hürriyet Daily News*, Sept. 17., Online at: <http://www.hurriyetdailynews.com/n.php?n=eu-earlier-warned-the-government-on-the-hsyk-structure-2010-09-17>

5 Dieter Sauter (2010) 'Farewell to the Generals' Constitution', *Qantara*, Sept. 16., Online at: http://www.qantara.de/webcom/show_artice.php/c-476/nr-1391/i.html

6 Svante Cornell (2010) 'What is Turkey's referendum really about?', *Turkey Analyst*, 3(14). Online at: <http://www.silkroadstudies.org/new/inside/turkey/2010/100830A.html>

provinces in which the constitutional reforms failed to gain more than 50% of the votes are located along the Thracian, Aegean and Mediterranean coast which constitutes the traditional voting heartland of Turkey's secular centre-left, represented in party politics mostly by the CHP. On the other hand, the great bulk of provinces from central Anatolia and the Black Sea region, voted in favor of the constitutional reform packages with the solitary exception of Tunceli, an eastern Anatolian centre-left stronghold. Quite incidentally, it is from these regions that the main voter base of the conservative Muslim-Democrat AKP comes from. Thus the referendum managed to reignite one of the main socio-cultural divides affecting contemporary Turkey, the on-going 'kulturkampf'⁷ between differing normative conceptions of modern society based on secular Kemalism on one hand as opposed to one based on communitarian values of social conservatism and religiously-influenced morality and pietism.

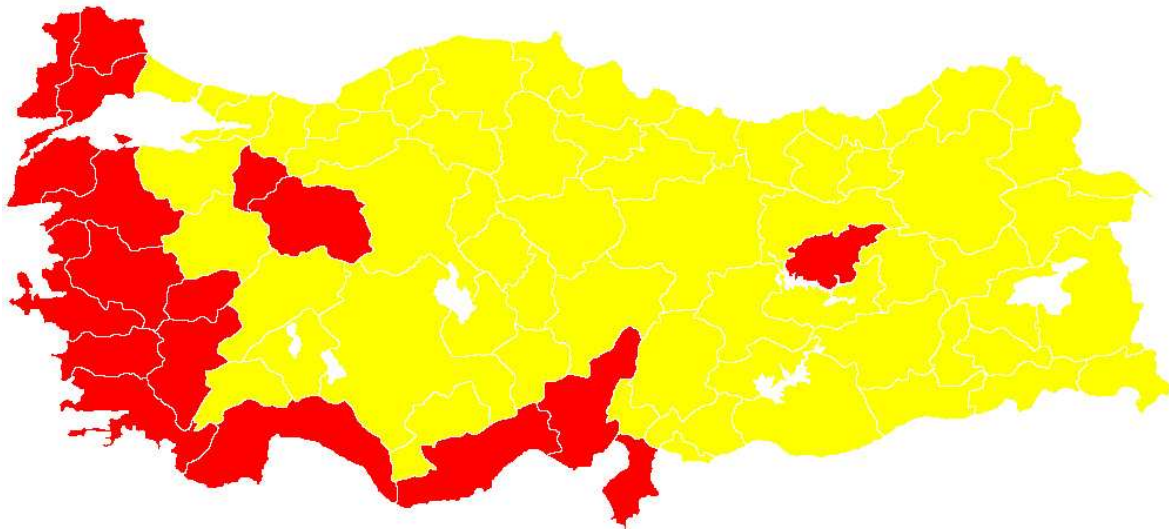


Figure 1: Red provinces voted against the constitutional changes, yellow provinces voted in favor of them. Data from the Turkish Supreme Election Board

A second key social division can be unmasked when comparing the voting turn-out across the provinces as can be seen in figure 2. While on average 73% of the Turkish electorate turned out across the country, in the South-Eastern provinces many stayed away from the polls. In Diyarbakir, the bustling regional centre, only a third of the electorate voted in the referendum while in the border provinces of Hakkari and Şırnak turnout dropped to 9% and 22%. The issue of course was not that the region's population, which is dominantly Kurdish, opposed changing a constitution designed under military supervision. Subjected to emergency rule and military courts for many years until recently, not to mention an ongoing bloody and costly conflict between the Turkish army and the PKK, the majority of the region's Kurdish population is crying out for a new civilian constitution enshrining the rights of Turkey's Kurdish minority. Paradoxically, for that reason, those that did go to the ballot box approved of the proposed changes with around 85% of the votes.

Simultaneously however, the pro-Kurdish Freedom and Democracy Party (BDP), the successor of the Democratic Society Party (DTP) which was dissolved by the constitutional court last year, felt that the proposed changes were cosmetic and superficial and did not go far

7 Ersin Kalaycıoğlu (2008) 'Turkish referendum: divided we stand', *Today Zaman*, Sept. 19., Online at: <http://www.todayszaman.com/tz-web/news-222065-turkish-referendum-aquadivided-chartreuse-chartreuse-stand.html>

enough in advancing the nature of Turkey's democracy or dealing with the concerns of Turkey's Kurdish population. Therefore, they chose to boycott the referendum. The party decried the fact that the reforms did not touch the 10% threshold in national elections which has traditionally obstructed pro-Kurdish parties from gaining parliamentary representation despite being the dominant actors in regional politics. The dampening effect of the boycott call by the BDP in the region which was followed up with demonstrations against the referendum and some sporadic street clashes between police and Kurdish youth on the day of the vote reflects the strength that the party holds. Although the AKP managed to increase their vote-share in the South-East significantly in the 2007 elections, based on its economic performance and conservative and morally pious character which sits well with the region's deeply traditional and poor population, there is much resentment and disillusionment concerning the government's piecemeal efforts to achieve a resolution in the Kurdish conflict and bring economic investment and services to the South-East. The deaths of 9 people on September 16th when a van drove over a mine and subsequent clashes at the victims' funeral attest to the burning urgency of pursuing a settlement of peace and dialogue.

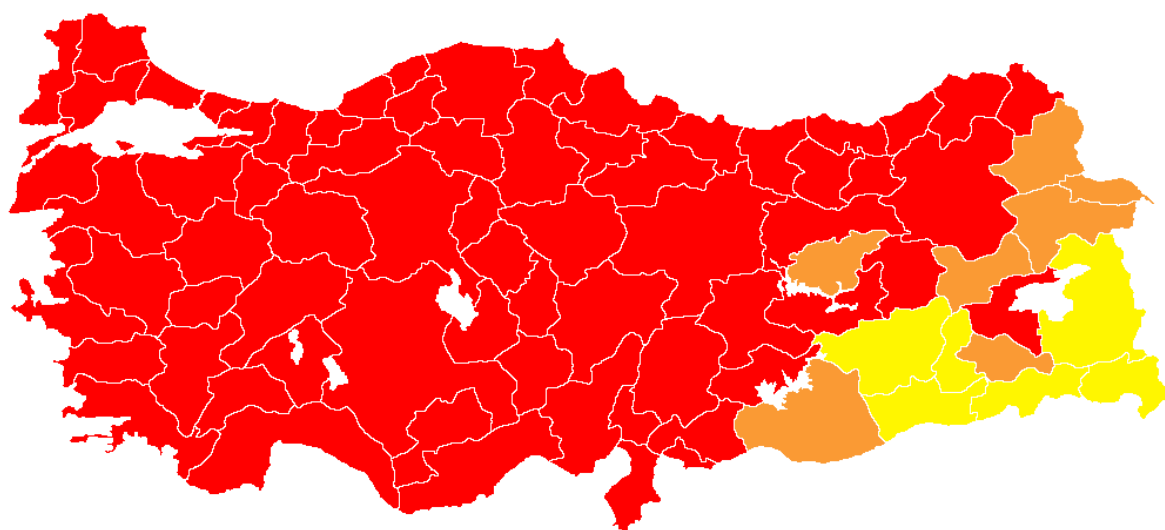


Figure 2: Red for over 70% turnout, orange for 70-50%, yellow for below 50%. Data from the Turkish Supreme Election Board

An additional subject which will also become an increased focus of attention as next year's elections approach is whether the AKP is serious in changing the nature of Turkey's political system from a parliamentary to a semi- or fully presidential one. Erdoğan has stated in the past that a presidential system would suit Turkey better although many critics allege that this refers more to his own political ambitions. In fact, the 1982 constitution already started the process of shifting the political system onto a semi-presidential footing when it established the office and imbued it with the power to block legislation and conduct its own special investigations. This was reinforced by the decision in 2007, also via public referendum, to open the office of president up to general elections rather than selection by parliament as was the case until then. Thus, the referendum vote in many aspects seemed to reflect more the actual political concerns of Turkey's populace than the official issue of constitutional reform. The results have seemingly not had a great impact in resolving the great issues that touch a raw nerve amongst the population such as for instance the secular-religious divide or the Kurdish conflict. It remains to be seen how the constitutional reform will alter Turkey's

structure of civilian governance and what impact it will have on the country's deep socio-political cleavages.

However, what can be said unequivocally about the implications of the constitutional reforms is that Turkey is moving away from the awkward 'military democracy' as which it was viewed in the past.⁸ To a large extent the ballot box has established its predominance over the army barracks as the main symbolic institution with which to address and try to overcome problems. The Turkish armed forces, marred by consistent putsch allegations in recent years and facing a seemingly interminable investigation into its connections with the so-called 'deep state', have lost the public confidence they once had as the country's most trusted institution. The media as well has become much more direct in discussing matters critical of the armed forces. According to the EU-Barometer surveys, which are conducted twice a year, confidence in the army as an institution has declined by more than 10% in the last 5 years. While this may not seem significant, especially as the surveys also disclose that the army still trumps over the government, the parliament, the political parties and the media, it is apparent that a glacial paradigm shift is occurring within the Turkish polity that is anchoring its heart away from an emphasis on coercive state power to a focus on civilian politics and elected office. Although issues of deep-seated distrust and cultural disagreement within society continue to polarize the country's foundations to its bones, this shift should be seen as an important improvement in the quality of Turkey's civilian governance.

Nevertheless, the future of Turkey's democratic development cannot be teleologically taken for granted. Instead, as anywhere else, 'long-term, dynamic and partially open-ended' processes and pressures of democratic contraction and expansion across a field of multiple dimensions will continue to dominate the road towards democratic consolidation.⁹ In that sense, the gradual transformation of Turkey's constitution into a civilian document should be cautiously welcomed as a further stepping stone in Turkey's learning process of democratic consolidation.

8 Jeremy Salt (1999) 'Turkey's Military "Democracy"', *Current History*, 98(625), pp.72-78

9 Laurence Whitehead. (2002) *Democratization: Theory and Experience*, Oxford University Press, p.187